IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.927 OF 1994.

Mr.Shyamrao Gopal Patil : Appellant.

versus

Mr.Maruti Gopal Patil & ors. : Respondents.

Mr.S.J.Ghogare for the appellant.

Mr.D.S.Sawant, AGP, for the respondents.

CORAM : D.G.DESHPANDE,J.

DATED : 19th January 2005.

ORAL ORDER.

1. Heard advocates for the appellant and respondents. Appellant was the original plaintiff before the trial Court. He filed a suit against the respondent No.1 - his brother and respondent No.2 - his father. Respondent No.2 died in 1989. Dispute between the parties is in respect of Room No.113 situated at 4th floor, Chhatrapati Shahu Nagar, Currey Road,

Bombay.

2. It is the case of the plaintiff that on or before 4th September 1976 the plaintiff, and defendant No.1 and defendant No.2 jointly secured this room as tenants in common or joint tenants. This Wanichi Chawl collapsed in 1977. Therefore, the Bombay Housing and Area Development Board (Now MHADA) allotted alternate accommodation at Camp No.2, Chawl No.170, Room No.1765, Sion, Koliwada, Bombay as against Room No.2 at Wanichi Chawl. It is the case of plaintiff that the tenancy rights in that room were acquired by paying a sum of Rs.7800/- to the original tenant, out of which Rs.4800/- were contributed by the plaintiff. But by consent, the tenancy rights were secured in the name of defendant No.1. He further contended that however the alternate accommodation was provided by the Board in the name of defendant No.1. There also by consent they had agreed that it should be in the name of defendant No.1. The plaintiff’s case is that initially in Room No.2 at Wanichi Chawl he was staying as a tenant in common and, in the alternate accommodation provided by Board he was also residing in his own rights along with the

original defendants.

3. However, on 1.1.1980 the Board allotted a new accommodation at Chhatrapati Shahu Sadan in the name of defendant No.1 but that was because of the original rent bill was in the name of defendant No.1 and, the plaintiff conceded to this allotment because defendant No.1 was his elder brother and as trustee of plaintiff's rights. The plaintiff was however occupying this newly allotted premises with defendant No.1. Everything was going on smoothly till November 1982. When in December, the his entry was prevented and thereafter permission was refused to him to enter, the plaintiff, therefore filed this suit against his brother - defendant No.1 and his father - defendant No.2 for a declaration and consequential reliefs of injunction etc. His contention was that the injunction was granted in his favour and it continued till the suit came to be disposed of though he was dispossessed during pendency of the suit by defendant No.1. In breach of order of injunction, he had taken out two motions of contempt against defendant No.1. But the trial Court did not pass any orders when the final suit came to be dismissed the contempt

motions were ordered to be heard along with the suit. Therefore, in this background he has filed this suit.

4. The question is, whether the plaintiff succeeds in proving that he is a joint tenant or tenant in common along with defendant No.1 and, is entitled to the declaration sought ?

5. The first thing that comes against the plaintiff in this case is that he is seeking a declaration that he is entitled to the tenancy rights of the suit room. The tenancy rights in respect of this property are conferred or granted by the MHADA - the owner of the property. MHADA acts under statute and the tenancy rights are created on the basis of agreement executed between the parties. Therefore, what the plaintiff is actually claiming is the claim against the MHADA or at any rate it is a claim where MHADA is a necessary party not only a proper party. Admittedly, the MHADA was not joined in the suit as defendants and, therefore, even though this specific defence was not raised, the question goes to the root of the matter because no such relief can be granted against a

party which is not on record as defendant. This is a legal obstacle in the way of the plaintiff. In other words, this is a legal obstacle in getting the reliefs sought, even though, for the sake of arguments, it is held that the plaintiff succeeded in proving his case.

6. So far as case on merits is concerned the counsel for the appellant strenuously and vehemently urged that there are circumstances to justify and hold that the plaintiff has contributed Rs.4600/-, as alleged by him, towards the consideration of Rs.7800/-. Counsel for the appellant/plaintiff drew my attention to the evidence of the plaintiff and the witnesses examined by the plaintiff in support of his contention.

. In his evidence the plaintiff has stated that for purchasing the room his father had contributed Rs.1000/-, the defendant No.1 contributed Rs.2,200/- and, he contributed Rs.4,600/-. He had taken Rs.1,800/- from Shivaji Bakwadkar as hand loan. Again Rs.1,800/-from Mahadeo Patil and Rs.1,000/- from one Ratnakar Shriyan as hand loan. None of these persons are

examined by the plaintiff. Then he stated that he himself was present at the time transaction along with his advocate Singate. He handed over that amount to one Rajaram Pawar who delivered it to advocate Singate and, advocate Singate given to Hari Vishnu - the tenant of the room. This evidence is most unnatural. Hari Vishnu Patil was the cousin of plaintiff and defendant No.1 and, if that is so, and if there was meeting together for very same purpose of giving money to Hari Vishnu, then there was no necessity of passing the money from one hand to other and, then ultimately being handed over to Hari Vishnu. It appears that all the documentary evidence is in the name of defendant No.1. The plaintiff's theory is only based on his contribution of Rs.4600/- or in all Rs.7800/- in the aforesaid manner. He has not examined three persons from whom he took the hand loans. His salary was at that time Rs.700/- to 800/- per month only. There is nothing on record to show that there was a joint family establishment with defendant No.1.

7. The plaintiff may have occupied the suit property along with defendant No.1 but that does not give him any right in the property. In fact,

according to defendant No.1, the plaintiff never resided with him and, the temporary period for which the plaintiff was allowed was by grace of defendant No.1 and in pursuance of any right of the plaintiff. The trial Court has considered all these aspects minutely and findings on all the Issues came to be given against the plaintiff. Therefore, the suit was rightly dismissed. No legal question is involved in this case. The plaintiff has miserably failed to prove his right and, therefore, no inference is required. Hence the appeal is dismissed.

[D.G.DESHPANDE]

19/01/2005 JUDGE.